

SEP 28 2015

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SERGIO SALGADO-SALINAS, AKA
Andres Gutierrez-Peralta,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 13-71243

Agency No. A088-767-273

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 21, 2015**

Before: REINHARDT, LEAVY, and BERZON, Circuit Judges.

Sergio Salgado-Salinas, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's order denying his application for cancellation of removal, and denying his motion to remand. We have jurisdiction under 8 U.S.C. § 1252. We

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

review for abuse of discretion the denial of a motion to remand. *Movsisian v. Ashcroft*, 395 F.3d 1095, 1097-98 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying Salgado-Salinas' motion to remand, where Salgado-Salinas failed to establish that the evidence he submitted was unavailable at the time of his removal hearing. *See Rodriguez v. INS*, 841 F.2d 865, 867 (9th Cir. 1988) ("Since a motion to remand is so similar to a motion to reopen, the motion to remand should be drafted in conformity with the regulations pertinent to motions to reopen[.]" (internal citation omitted)); 8 C.F.R. § 1003.2(c) ("A motion to reopen proceedings shall not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing[.]").

It follows that the BIA did not violate due process in denying Salgado-Salinas' motion to remand. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (to prevail on a due process challenge, an alien must show error and prejudice).

In his opening brief, Salgado-Salinas fails to raise, and therefore has waived, any challenge to the BIA's grounds for dismissal of his appeal. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013) (a petitioner waives a

contention by failing to raise it in the opening brief).

The government's August 12, 2015, motion to lift the abeyance is denied as moot.

PETITION FOR REVIEW DENIED.